

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8070 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SARVODAYA INDUSTRIAL CO.OP SOCLTD

Versus

REGIONAL PROVIDENT FUND COMMI.

Appearance:

MR TN RAY for Petitioner

MR JD AJMERA for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 08/10/97

ORAL JUDGMENT

Heard learned counsel for the parties.

2. The Sarvodaya Industrial Cooperative Society Ltd., Vadodara, filed this Special Civil Application before this Court and challenge is made to the order of the Regional Provident Fund Commissioner, annexure 'B', dated 30th April 1991, wrongly mentioned as annexure 'C'

in the prayer clause of Special Civil Application, under which the said authority, in exercise of its powers conferred under Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, (hereinafter referred to as the 'Act 1952') has determined the amount of provident fund contribution (Employer's and Employees' share), administrative charges, family pension fund contributions (Employer's and Employees' share), insurance fund contributions and insurance fund administrative charges, amounting to Rs.2,14,775/- for the period from October 1988 to February 1991.

3. This petition was admitted by this Court on 29.1.93 and interim relief has been granted and stay of the recovery of the amount was ordered on condition that 50% (fifty percent) of the amount demanded is paid on or before February 28, 1993. It was also ordered that in case the 50% of the amount is not paid by the aforesaid date, interim relief granted herein shall automatically stand vacated. It appears that against the said order, the petitioner has approached the Hon'ble Supreme Court by filing petition for Special Leave to Appeal being No.3313 of 1993 and the same was dismissed on 19th April 1993.

4. Under section 7-D(1) of the Act 1952, the Central Government has been empowered, by notification in official gazette, to constitute one or more Appellate Tribunals to be known as the Employees' Provident Funds Appellate Tribunal. Section 7-I of the Act 1952 provides that any person aggrieved by notification issued by the Central Government or an order passed by the Central Government or any authority, under the proviso to sub-section (3), or sub-section (4), of section 1 or section 3 or sub-section (1) of section 7-A, or section 7-B (except on order rejecting an application for review referred to in sub-section (5) thereof), or section 7-C, or section 14-B, may prefer an appeal to a Tribunal against such notification or order. Sub-section (2) of section 7-I provides that every appeal under sub-section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed.

5. The learned counsel for the respondent made a statement before this Court that now the Central Government has constituted the aforesaid appellate tribunal and as such, this Special Civil Application is not maintainable.

6. I find sufficient merits in this contention of the learned counsel for the respondent. When this petition was filed before this Court, the petitioner was not having any statutory alternative remedy of appeal available against the impugned orders, but after the constitution of the appellate tribunal under section 7-D of the Act, 1952, the petitioner has to avail of that remedy by filing an appeal before the appellate tribunal. A request has been made by learned counsel for the petitioner that the petitioner's this petition may be transmitted to the aforesaid tribunal, but this course cannot be adopted for the reason that the appeals are to be filed only in the manner prescribed under the Act 1952. Otherwise also, the Act 1952, nowhere provides for transmission of the writ petition to the appellate tribunal, on its constitution. Then, the learned counsel for the petitioner contended that interim order is operating in favour of the petitioner and in case this writ petition is dismissed on the ground of availability of alternative remedy, the petitioner may face difficulties. This contention is also of no substance. When the appellate tribunal has been constituted, this Court has to see that the appellate authority considers and decides the matter and the statutory right of appeal has to be availed of by the petitioner. Normally, this Court would not interfere and direct the parties to have a recourse to the alternative remedy where it is available under the statute. In the present case, at the time when this petition has been filed, that remedy was not available, but during the pendency of this petition, that statutory remedy is now available. It is settled law that where adequate remedy can be read in the statute, the plea of resort to writ remedy under Article 226 or 227 of the Constitution of India must be discouraged. Reference in this respect may have to the decision of the Apex Court in the case of Shyam Kishore v. Municipal Corporation, Delhi, reported in AIR 1992 SC 2279. It is a fact that this Court has protected the petitioner by grant of interim relief. The petitioner may need some time to file appeal before the appellate tribunal and during this period, in case the interim order granted by this Court is ordered to be continued, it will not result in any loss or cause any prejudice to the respondent. The learned counsel for respondent also very fairly stated that in case this Court extends the interim relief granted by this Court for a reasonable time, he has no objection.

7. In the result, this Special Civil Application fails only on the ground that now statutory remedy of appeal is available to the petitioner under section 7-I

of the Act 1952, and in case such appeal is filed within a period of one month from today, the same shall not be dismissed only on the ground of limitation and shall be decided on merits by the appellate tribunal. The interim relief which has been granted by this Court in this case is extended for further six weeks from today. The appellate tribunal shall consider afresh, the matter of continuation of interim relief in favour of petitioner in accordance with law. It is however made clear that the appellate tribunal, while dealing with the question of extending the interim relief granted by this Court, shall not be influenced by the fact that this Court had earlier granted interim relief in favour of the petitioner, and shall decide the matter in accordance with law. Rule discharged subject to aforesaid directions. No order as to costs.

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(sunil)